China


Highlights of the Platform Guide include the following:
• Definition of the Relevant Market. In contrast to the general requirement that a market must be clearly defined before assessing market harm, the Platform Guide appears to create an exception when investigating cases in the internet platform economy. Article 4.3 of the Platform Guide suggests that there may be instances where the relevant market is not required.

• MFN Clause. The Platform Guide provides that if a platform operator requires entities conducting business to agree to “most favored nation” (MFN) clauses, such a requirement may be considered a monopolistic agreement and abuse of market dominance. Even before promulgation of the Platform Guide, Chinese regulators were already scrutinizing MFN clauses, although not in the internet sphere.

• Necessary Facilities. The Platform Guide specifies that if an internet platform is a “necessary facility,” then the platform operator shall not refuse to deal with operators that wish to utilize or conduct business on the platform without justifiable reasons. To determine whether a platform constitutes a “necessary facility,” factors such as the substitutability of alternative platforms, the platform’s data occupancy, and the degree of dependence of operators on that platform may be considered.

Japan


On Feb. 17, 2021, the JFTC revealed its final report on digital advertising. This survey regarding trade practices in the digital advertising sector was conducted to promote efforts to prevent violations of the Antimonopoly Act (“AMA”) and ensure a fair and free competitive environment. As a result of the survey, JFTC stated that to create a competitive environment in the field of digital platforms, it is necessary not only to enforce the AMA but also to consider and take action under a variety of other regulations. The JFTC will continue to work actively on coordination and cooperation with the Headquarters for Digital Market Competition and other relevant ministries to maintain a competitive environment.

B. New regulation concerning specific digital platforms goes into effect.

On Feb. 1, 2021, “the Act on the Improvement of Transparency and Fairness in Trading on Specified Digital Platforms” went into effect. For now, the Act covers online malls and app stores with a certain amount of domestic sales, but some commentators expect that this new regulation will apply to the digital-advertising market this spring.

C. First case fine imposed under the Exclusionary Private Monopolies guidelines.

On Feb. 19, 2021, JFTC issued a JPY 6,120,000 (approx. USD 60,000) penalty order against a company that sells aviation fuel. The case concerns the sale of aviation
fuel at airports. JFTC found that the company effectively restricted competition by forcing its business partners not to receive refueling from newly entered competitors, thereby eliminating said competitors’ business activities. The company had warned its business partners that if they mixed their fuel with that of newly entered competitors, the business partners would not be able to continue fueling, and asked them to sign a document stating that they would not seek damages resulting from an accident after receiving fuel from the competitor.

This is the first case in Japan where a company has been ordered to pay a penalty for violation of the Exclusionary Private Monopoly guidelines. The guidelines, issued in 2019, prohibit an act by which an entrepreneur, alone or jointly with other entrepreneurs, attempts to monopolize a market by excluding competitors from the market or by obstructing new entrants.

*Edoardo Gambaro, Pamela J. Marple, Yuji Ogiwara, Stephen M. Pepper, Gillian Sproul, Hans Urlus, Dawn (Dan) Zhang, Mari Arakawa, Filip Drgas, Simon Harms, Marta Kownacka, Pietro Misanelli, Massimiliano Pizzonia, Anna Celejewska-Rajchert, Jose Abel Rivera-Pedroza, Ippei Suzuki, Rebecca Tracy Rotem* and *Alan W. Hersh* contributed to this article.

©2022 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume XI, Number 64